HVN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO. 87 OF 2005
WITH
INCOME TAX APPEAL NO. 88 OF 2005

The Commissioner of Income Tax ... Appellant

Versus

Ritu V. Mallya ... Respondent

Mr. B.M. Chatterjee with Ms. P.P. Bhosale and Mr. P.S. Sahadevan for the Appellants.

Ms. Beena Pillai i/by D.M.Harish & Co. for Respondents.

CORAM: F.I. REBELLO &
R.S.MOHITE, JJ.
DATED: DECEMBER 19, 2007

P.C.

. These are the appeals filed by the Revenue against the order of the Tribunal for the Assessment year 1995-96 and assessment year 1997-98. The question of law in respect of which the appeal is filed is as under :

> "Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in holding that the addition in question for the assessment year under consideration as made by the Assessing Officer on the basis of papers, documents and other materials seized by the department under search note seizure action under Section 132 and other related provisions of the Income Tax Act, 1961, were based on insufficient material, tantamount to suspicion, surmises, conjectures and not sustainable in law?"

. This question of law is in respect of the deletion of Rs. 20 lacs in the Income of the assessee.

. On behalf of the respondents, the learned counsel has pointed out that in respect of the very same issue, the Revenue has not preferred appeals for the assessment year 1992-93 and 1993-94. On behalf of the appellant, the learned counsel states that the Commissioner had directed filing of the appeals. Whatever be the case, the appeals have not been filed.

. The Revenue had also preferred appeals against the order of the ITAT for the assessment years 1987-88, 1988-89, 1989-90, 1990-91, 1991-92. In respect of these appeals on the very issue, the same have been dismissed for failure to remove office objections by order dated 4.3.2004.

. Considering the non filing of the appeals and the dismissal of other appeals, on the very same issue, in our opinion, the appeals presently filed would not be maintainable.

. Irrespective of the same, we have gone through the orders of the tribunal and have also called the records in the earlier Appeal and have perused the

order passed by the ITAT for the assessment years 1986-87 onwards in Income Tax Appeal No. 8463/BOM/90 and other appeals. We find that the aspect of the seizure of the document was considered extensively both by the Commissioner (Appeals) as also by ITAT. They have rendered concurrent findings of fact that the document which was seized during the search operations, was not acted upon. Once there are two concurrent findings of fact the question of law as framed would not arise unless it is pointed out on behalf of the revenue that the evidence on record has not been considered and or that the evidence on record has wrongly been interpreted so as to result in the findings becoming perverse. In the instant case, no such material is placed before us, warranting us to arrive at a conclusion that the findings are perverse.

. In the light of the above, in our opinion and for the all foregoing reasons, the appeals as filed do not raise any question of law and are accordingly dismissed.

(R.S.MOHITE, J.) **(F.I.REBELLO, J.)**